

Communication

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Provision of cross-border investment services - Standard notification forms

Scope

- *Stockbroking firms governed by Belgian law*
- *Credit institutions governed by Belgian law that use tied agents to provide investment services under the freedom to provide services or the right of establishment*

Summary/Objectives

This Communication provides further details on the notification procedure to be followed by the institutions concerned when providing cross-border investment services.

Dear Sir,
Dear Madam,

In accordance with Articles 544 to 550 of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms (hereinafter referred to as “the Banking Law”), stockbroking firms governed by Belgian law may carry out all or part of their activities in other Member States of the European Economic Area (EEA), either under the freedom to provide services, through the establishment of a branch or by using one or more tied agents¹. This is the so-called “European passport regime”.

Commission Implementing Regulation (EU) 2017/2382 of 14 December 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the transmission of information in accordance with Directive 2014/65/EU (hereinafter referred to as “Implementing Regulation (EU) 2017/2382”) imposes uniform rules for the notification procedure to be followed by institutions wishing to benefit from this European passport regime.

¹ Article 3, 25°/1 of the Banking Law: “tied agent: a tied agent within the meaning of Article 2, 25° of the Law of 25 October 2016”.

This Communication aims to provide further details on the notification procedure to be followed by stockbroking firms in the context of the European passport regime.

It also draws attention to the fact that, in accordance with Implementing Regulation (EU) 2017/2382 and with Articles 88/1 and 90, § 2 of the Banking Law, this notification procedure should also be followed by credit institutions that use tied agents to provide investment services under the freedom to provide services or the right of establishment. This applies not only to credit institutions that are under the direct supervision of the Bank, but also to credit institutions that are under the direct supervision of the European Central Bank, in which case the Bank acts as first point of contact in this procedure.

In addition, this Communication also covers the case where a stockbroking firm governed by Belgian law opens a branch or provides services on the territory of a non-EEA Member State.

1. European passport for stockbroking firms

All stockbroking firms governed by Belgian law are required to notify the Bank in advance if they intend to carry out all or part of the investment or ancillary services referred to in Article 3, 71° and 72° of the Banking Law for which they are authorised in Belgium on the territory of another EEA Member State under the freedom to provide services or through the establishment of a branch.

Articles 544 to 550 of the Banking Law lay down the procedure to be followed as well as the information to be submitted to the Bank in this context through the standard forms annexed to this Communication.

1.1 Freedom to provide services in the EEA

If a stockbroking firm intends to operate in another EEA Member State under the freedom to provide services, it should submit the information specified in Article 548 in conjunction with Article 90 of the Banking Law. Stockbroking firms that wish to use one or more tied agents established in Belgium under the freedom to provide services should also provide the Bank with the identification details of these agents².

The Bank may, within one month of receipt of the complete dossier, oppose the implementation of the project if the provision of cross-border services could have negative consequences for the organisation, financial situation or supervision of the stockbroking firm³.

The stockbroking firm should also notify the Bank in writing, through the forms annexed to this Communication, at least one month in advance, of any changes to the information it has previously provided⁴.

1.2 Opening of a branch in the EEA or use of a tied agent established in the host Member State

If a stockbroking firm intends to open a branch, it should submit the information specified in Article 544 in conjunction with Article 86 of the Banking Law through the forms annexed to this Communication.

Stockbroking firms that wish to use one or more tied agents established on the territory of another EEA Member State without opening a branch there should submit the information specified in Article 546 in conjunction with Article 88/1 of the Banking Law through the form specifically intended for that purpose.

² Article 548, § 1, 2° of the Banking Law.

³ Article 548, § 2 in conjunction with Article 90, § 1 of the Banking Law.

⁴ Article 550 of the Banking Law.

The Bank may oppose the implementation of the project if the opening of the branch or the use of the tied agent could have negative consequences for the organisation, financial situation or supervision of the stockbroking firm⁵.

The Bank's decision will be communicated to the stockbroking firm concerned within three months of receipt of the complete dossier. If the Bank fails to notify the stockbroking firm of its decision within that period, it will be deemed to have no objections to the project⁶.

Using the annexed form, the stockbroking firm should notify the Bank and the competent authorities of the host State in writing at least one month in advance of any changes to the information previously provided by it⁷. Depending on the changes, the Bank may oppose them⁸. A specific form should also be submitted in the event of termination.

2. Freedom to provide services or establishment by a stockbroking firm of a branch in a non-EEA Member State

Both the freedom to provide services and the establishment of a branch in a non-EEA Member State are subject to the same procedure and notification requirements as the freedom to provide services and the establishment of a branch in an EEA Member State⁹. Consequently, stockbroking firms intending to operate under the freedom to provide services, or to establish branches in a third country are asked to inform the Bank of their project and to submit – mutatis mutandis – the same information as requested in the corresponding standard forms annexed to this Communication.

If the country in which the branch is to be established is a third country, the Bank may agree with that country's supervisor on rules for the opening and supervision of the branch as well as for the desired exchange of information¹⁰. Naturally, the stockbroking firm will be required to comply with the legal provisions applicable in the host country.

3. Credit institutions governed by Belgian law that use tied agents to provide investment services under the freedom to provide services or the right of establishment

In accordance with Article 1 of Implementing Regulation (EU) 2017/2382 and with Articles 88/1 and 90, § 2 of the Banking Law, credit institutions governed by Belgian law that wish to use tied agents in the context of the European passport for investment services should also comply with the notification procedure set out in this Communication and use the corresponding standard forms.

4. Forms

To ensure that the cooperation and exchange of information between the supervisory authorities are as smooth as possible, Implementing Regulation (EU) 2017/2382 requires the use of the annexed standard forms. Furthermore, Article 2 of this Regulation stipulates that any notification or communication submitted under the Regulation should be provided in an official Union language accepted by both the competent authority of the home Member State and by the competent authority of the host Member State.

⁵ Article 544 in conjunction with Article 86 of the Banking Law.

⁶ Article 544 in conjunction with Article 86 of the Banking Law.

⁷ Article 547 in conjunction with Article 89 of the Banking Law.

⁸ Article 547 in conjunction with Article 89 of the Banking Law.

⁹ Article 544 in conjunction with Article 86, seventh paragraph and Article 548, § 2 in conjunction with Article 90, § 3 of the Banking Law.

¹⁰ Article 546 in conjunction with Article 88 of the Banking Law.

Pursuant to Article 2 of Implementing Regulation (EU) 2017/2382¹¹, the Bank therefore asks institutions to fill in the annexed forms in English. However, to ensure a proper understanding of the information requested, the Dutch or French translations of these forms can be consulted in [the Annexes to the aforementioned Implementing Regulation as published on EUR-lex](#).

These forms should be submitted to the Bank through the secure eCorporate platform.

For questions regarding the notification procedure, please contact the Prudential Supervision of Banks and Stockbroking Firms service at the following e-mail address and phone number:

- E-mail: tb@nbb.be
- Phone: +32 2 221 51 00

5. Repeal of Communication NBB 2015_08 of 10 February 2015 to stockbroking firms governed by Belgian law

Communication NBB_2015_08 of 10 February 2015 on the passport regime for stockbroking firms governed by Belgian law is repealed and replaced by this Communication.

A copy of this Communication will be sent to your institution's accredited statutory auditor(s).

Yours faithfully,

Pierre WUNSCH
Governor

Annexes - only available through www.nbb.be:

Annex 1: Provision of investment services and activities passporting notification in accordance with Article 34 of Directive 2014/65/EU

Annex 2: Branch passport notification in accordance with Article 35 of Directive 2014/65/EU

Annex 3: Notification concerning the use of a tied agent established in another Member State of the EEA or change of particulars in accordance with Article 35 of Directive 2014/65/EU

Annex 4: Notification concerning the termination of the operation of a branch or the use of a tied agent established in another Member State of the EEA in accordance with Article 35 of Directive 2014/65/EU

¹¹ Article 2 of Implementing Regulation (EU) 2017/2382 specifies the following: "The competent authorities shall make publicly available information on the accepted language(s) and means of submission, including contact details for passport notifications."